



House of Representatives

File No. 902

General Assembly

January Session, 2007

(Reprint of File Nos. 422 and 801)

Substitute House Bill No. 6856
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 31, 2007

**AN ACT CONCERNING A MUNICIPAL STORMWATER AUTHORITY
PILOT PROGRAM, SPECIAL SERVICES DISTRICTS, CLEAN WATER
FUND DISBURSEMENTS AND THE DEFINITION OF UNIMPROVED
LAND FOR TAX PURPOSES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective from passage*) (a) Not later than September
- 2 1, 2007, the Commissioner of Environmental Protection shall establish
- 3 a municipal stormwater authority pilot program to provide grants to
- 4 not more than four municipalities that border Long Island Sound to
- 5 enable such municipalities to establish stormwater authorities.
- 6 Municipalities satisfying the following criteria shall be given priority
- 7 to participate in the pilot program: A municipality that has a
- 8 population of more than eighteen thousand and less than eighteen
- 9 thousand five hundred; a municipality that has a population of more
- 10 than twenty-six thousand and less than twenty-six thousand five
- 11 hundred; a municipality that has a population of more than eighty-
- 12 four thousand and less than eighty-four thousand five hundred, and
- 13 one municipality that has a population of more than one hundred
- 14 twenty-five thousand and less than one hundred twenty-five thousand

15 five hundred. For the purposes of this section, "population" means the
16 number of people according to the most recent version of the
17 Connecticut Register and Manual.

18 (b) In order to be considered for such a grant, each eligible
19 municipality shall submit a grant application on forms prescribed by
20 the commissioner not later than September 15, 2007. The commissioner
21 may reject any grant application that the commissioner determines to
22 be incomplete. The municipality that submitted such rejected
23 application shall be given not more than fifteen days to correct the
24 defects in such application. In the event that a municipality given
25 priority in accordance with subsection (a) of this section is unable to
26 correct such defects to the commissioner's satisfaction, the
27 commissioner shall consider such municipality a non-priority
28 municipality, as described in subsection (c) of this section. Any
29 municipality that fails to submit a timely application for the grant shall
30 be deemed to have waived such municipality's right to apply for the
31 grant.

32 (c) In the event that one or more of the municipalities given priority
33 in accordance with subsection (a) of this section waives its right to
34 participate in such pilot program, any municipality required to comply
35 with the requirements of a permit issued pursuant to section 22a-430
36 or 22a-430b of the general statutes for the discharge of stormwater
37 from, or associated with, a separate storm sewer system owned or
38 operated by such municipality may apply to the commissioner to
39 participate in the pilot program in accordance with procedures
40 prescribed by the commissioner. Timely applications for such grants
41 will be reviewed in the order in which they were received to determine
42 if such municipality meets the selection criteria for non-priority
43 municipalities. Such selection criteria shall include, but not be limited
44 to: (1) The proximity of the municipality to Long Island Sound or other
45 major river or water body, and (2) whether the inclusion of such
46 municipality will result, in the aggregate of all participating
47 municipalities, in a diverse representation of urban and suburban
48 areas. For the purpose of this section, "separate storm sewer system"

49 means a conveyance for stormwater, including, but not limited to,
50 roads with drainage systems, streets, catch basins, curbs, gutters,
51 ditches, man-made channels or storm drains that discharge into the
52 waters of the state.

53 (d) Each municipality selected by the commissioner to participate in
54 such pilot program shall submit a stormwater management program
55 for the commissioner's approval. Such program shall include an
56 estimate of the operational and capital expenses and income required
57 to financially support implementation of the plan over a five-year
58 period, and other such elements as the commissioner may prescribe in
59 accordance with the purposes specified in section 2 of this act.

60 (e) Notwithstanding the provisions of sections 22a-475 to 22a-483,
61 inclusive, of the general statutes, the Commissioner of Environmental
62 Protection may provide grants that in the aggregate do not exceed one
63 million dollars, from any account in the Clean Water Fund established
64 under section 22a-477 of the general statutes, to the extent that bond
65 funds are available, to municipalities participating in the pilot program
66 established pursuant to sections 1 to 3, inclusive, of this act, for
67 reimbursement of not more than eighty per cent of the costs incurred
68 by said municipalities related to the planning, engineering and legal
69 costs associated with the establishment of an approved stormwater
70 authority and the development of a stormwater program pursuant to
71 sections 1 to 3, inclusive, of this act. Any costs associated with the
72 application for participation in the pilot program shall not be eligible
73 for reimbursement. The commissioner shall be reimbursed from the
74 Clean Water Fund for the reasonable costs of administering such grant
75 program.

76 Sec. 2. (NEW) (*Effective from passage*) (a) Any municipality selected
77 by the commissioner to participate in the pilot program established
78 pursuant to section 1 of this act may, by ordinance adopted by its
79 legislative body, designate any existing board or commission or
80 establish a new board or commission as the stormwater authority for
81 such municipality. If a new board or commission is created, such

82 municipality shall, by ordinance, determine the number of members
83 thereof, their compensation, if any, whether such members shall be
84 elected or appointed, the method of their appointment, if appointed,
85 and removal and their terms of office, which shall be so arranged that
86 not more than one-half of such terms shall expire within any one year.

87 (b) The purposes of the stormwater authority shall be to: (1)
88 Develop a stormwater management program, including, but not
89 limited to, (A) a program for construction and post-construction site
90 stormwater runoff control, including control detention and prevention
91 of stormwater runoff from development sites; or (B) a program for
92 control and abatement of stormwater pollution from existing land
93 uses, and the detection and elimination of connections to the
94 stormwater system that threaten the public health, welfare or the
95 environment; (2) provide public education and outreach in the
96 municipality relating to stormwater management activities and to
97 establish procedures for public participation; (3) provide for the
98 administration of the stormwater management program; (4) establish
99 geographic boundaries of the stormwater authority district; and (5)
100 recommend to the legislative body of the municipality in which such
101 district is located the imposition of a levy upon the taxable interests in
102 real property within such district, the revenues from which may be
103 used in carrying out any of the powers of such district. In
104 accomplishing the purposes of this section, the stormwater authority
105 may plan, layout, acquire, construct, reconstruct, repair, maintain,
106 supervise and manage stormwater control systems.

107 (c) Any stormwater authority created by a municipality pursuant to
108 subsection (a) of this section may levy fees from property owners of
109 the municipality for the purposes described in subsection (b) of this
110 section. In establishing fees for any property in its district, the
111 stormwater authority may consider criteria, including, but not limited
112 to, the following: The area of the property containing impervious
113 surfaces from which stormwater runoff is generated, land use types
114 that result in higher concentrations of stormwater pollution and the
115 grand list valuation of the property. The stormwater authority may

116 reduce or defer such fees for land classified as, or consisting of, farm,
117 forest or open space land.

118 (d) The authority may adopt municipal regulations to implement
119 the stormwater management program.

120 (e) The authority may, subject to the commissioner's approval, enter
121 into contracts with any municipal or regional entity to accomplish the
122 purposes of this section.

123 Sec. 3. (NEW) (*Effective September 1, 2007*) On or before February 11,
124 2008, the municipalities participating in the pilot program established
125 in section 1 of this act shall submit a joint report in accordance with the
126 provisions of section 11-4a of the general statutes to the joint standing
127 committee of the General Assembly having cognizance of matters
128 relating to the environment on the status of the pilot program. Said
129 report shall include, but not be limited to: (1) The recommendation on
130 municipalities' whether further legislation is necessary to grant
131 stormwater authorities the additional powers to issue bonds, notes or
132 other evidences of debt, (2) a map showing the geographic boundaries
133 of the stormwater authority district, (3) information concerning the
134 purpose and amount of any assessments recommended to fund the
135 municipal stormwater authority, and (4) any other information that the
136 commissioner requests pursuant to the grant agreement entered into
137 between the commissioner and the municipality in accordance with
138 section 2 of this act.

139 Sec. 4. Section 7-339n of the general statutes is repealed and the
140 following is substituted in lieu thereof (*Effective September 1, 2007*):

141 A special services district shall constitute a body politic and
142 corporate and the ordinance establishing such a district shall confer
143 upon such district such of the following powers as are provided in the
144 ordinance: [(a)] (1) To sue and be sued; [(b)] (2) to acquire, hold and
145 convey any estate, real or personal; [(c)] (3) to contract; [(d)] (4) to
146 borrow money, provided any obligation incurred for this purpose shall
147 be discharged not more than [one year] seven years after it was

148 incurred, and such district may pledge any revenues to be received
149 pursuant to section 7-339r against any such obligation; [(e)] (5) to
150 recommend to the legislative body of the municipality in which such
151 district is located the imposition of a levy upon the taxable interests in
152 real property within such district, the revenues from which may be
153 used in carrying out any of the powers of such district; [(f)] (6) to
154 construct, own, operate and maintain public improvements; and [(g)]
155 (7) to provide, within such district, some or all of the other services
156 which such municipality is authorized to provide therein, except that
157 no such ordinance may confer upon any such district the power to
158 provide elementary or secondary public education services, and
159 provided further no such ordinance may confer upon any such district
160 the power to provide services which are then being provided within
161 any portion of the area included in such district by any multitown
162 body or authority.

163 Sec. 5. Subsection (b) of section 22a-517 of the general statutes is
164 repealed and the following is substituted in lieu thereof (*Effective from*
165 *passage*):

166 (b) The initial project undertaken by a new authority shall receive
167 (1) a grant of twenty-five per cent of the cost of the project, unless such
168 project is a combined sewer project, in which case a new authority
169 shall receive a grant of fifty-five per cent of the cost of the project. In
170 either case such cost shall be the cost the United States Environmental
171 Protection Agency uses in making grants pursuant to Part 35 of the
172 federal Construction Grant Regulations Act and Titles II and VI of the
173 federal Water Pollution Control Act, as amended; and (2) a loan for the
174 remainder of the costs of the project, not exceeding one hundred per
175 cent of the eligible water quality project costs. [On or after fiscal year
176 2007, all projects eligible for funding shall receive a loan of one
177 hundred per cent of the eligible costs and shall not receive a project
178 grant.] All loans made in accordance with the provisions of this section
179 shall bear an interest rate of two per cent per annum. The
180 Commissioner of Environmental Protection may allow any project
181 fund obligation to be repaid by a borrowing authority prior to

182 maturity without penalty.

183 Sec. 6. Subsection (b) of section 12-494 of the general statutes is
184 repealed and the following is substituted in lieu thereof (*Effective July*
185 *1, 2007*):

186 (b) The rate of tax imposed under subdivision (1) of subsection (a) of
187 this section shall, in lieu of the rate under said subdivision (1), be
188 imposed on certain conveyances as follows: (1) In the case of any
189 conveyance of real property which at the time of such conveyance is
190 used for any purpose other than residential use, except unimproved
191 land, the tax under said subdivision (1) shall be imposed at the rate of
192 one per cent of the consideration for the interest in real property
193 conveyed; (2) in the case of any conveyance in which the real property
194 conveyed is a residential estate, including a primary dwelling and any
195 auxiliary housing or structures, regardless of the number of deeds,
196 instruments or writings used to convey such residential real estate, for
197 which the consideration or aggregate consideration, as the case may
198 be, in such conveyance is eight hundred thousand dollars or more, the
199 tax under said subdivision (1) shall be imposed (A) at the rate of one-
200 half of one per cent on that portion of such consideration up to and
201 including the amount of eight hundred thousand dollars, and (B) at the
202 rate of one per cent on that portion of such consideration in excess of
203 eight hundred thousand dollars; and (3) in the case of any conveyance
204 in which real property on which mortgage payments have been
205 delinquent for not less than six months is conveyed to a financial
206 institution or its subsidiary which holds such a delinquent mortgage
207 on such property, the tax under said subdivision (1) shall be imposed
208 at the rate of one-half of one per cent of the consideration for the
209 interest in real property conveyed. For the purposes of subdivision (1)
210 of this subsection, "unimproved land" includes land designated as
211 farm, forest or open space land.

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| <p>This act shall take effect as follows and shall amend the following sections:</p> |
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|-----------|--------------------------|-------------|
| Section 1 | <i>from passage</i> | New section |
| Sec. 2 | <i>from passage</i> | New section |
| Sec. 3 | <i>September 1, 2007</i> | New section |
| Sec. 4 | <i>September 1, 2007</i> | 7-339n |
| Sec. 5 | <i>from passage</i> | 22a-517(b) |
| Sec. 6 | <i>July 1, 2007</i> | 12-494(b) |

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: See below

Municipal Impact: See below

Explanation

The fiscal impact of this bill is uncertain. While it expands the pilot program from 3 towns to not more than 4 towns, it sets a limit on the grant payments from the Clean Water Fund (bonds) at \$1 million. It allows for the DEP to be reimbursed from the Fund for reasonable administrative costs, which at this time are indeterminate. The elimination of the requirement for regulations and a report by DEP should result in a cost avoidance. However, the Commissioner is to prescribe procedures, which may have a cost that would be reimbursed from the Fund. The provision that deletes a portion of the current law concerning Clean Water loans and grants has an indeterminate impact at this time.

Section 6 of the bill defines “unimproved land” for the purposes of the real estate conveyance tax¹ to include farm, forest or open space land.

The previous statutory provisions for this tax did not include a definition of unimproved land. This bill appears to provide a broad interpretation of properties that may be taxed at the rate for unimproved land because it includes land that was once improved as well as land that was never improved.

This will result in a General Fund revenue loss to the degree that it

¹ The Real Estate Conveyance Tax rate on unimproved land is 0.5% of the purchase price and the rate nonresidential property other than unimproved land is 1.0%

increases the number of properties eligible to be taxed at the lower rate. However, the amount of the loss cannot be determined because the number and value of conveyances that will be affected is not known.

Regarding municipal impact, the bill allows the stormwater authorities to levy fees on property owners and to recommend to the legislative body of the town a tax levy. These provisions could result in increased revenues to cover the costs of authorities. A joint report is required of the towns participating in the pilot program. Some cost may be incurred.

House "A" struck the file copy of the bill and results in the fiscal impact described above.

The Out Years

The future fiscal effects of this bill will depend to a substantial degree on the outcome of the pilot programs and thus are indeterminate at this time.

OLR Bill Analysis**sHB 6856 (as amended by House "A")******AN ACT ESTABLISHING A MUNICIPAL STORMWATER
AUTHORITY PILOT PROGRAM.*****SUMMARY:**

This bill requires the Department of Environmental Protection (DEP) commissioner to create a municipal stormwater authority pilot program in four municipalities adjoining Long Island Sound by September 1, 2007, and authorizes her to provide up to \$1 million in grants to the participating towns. Each stormwater authority may adopt regulations to implement a stormwater management program and may, with the commissioner's approval, enter into contracts with any municipal or regional entity to accomplish its purposes.

It defines unimproved land, for purposes of the commercial real estate conveyance tax, as farm, forest, or open space, and reduces the conveyance tax on the sale of such property from 1% from 0.5%. (The conveyance tax applies to real property transfers for \$2,000 or more, with several exceptions. The seller pays the tax.) The bill does not limit farm, forest, or open space land to such property in the "490" program or require that it continue to be used as farm, forest, or open space land after it is conveyed. It is also unclear how this provision relates to the 490 program's conveyance tax penalty (see BACKGROUND).

By law, regional water pollution control authorities finance their water pollution control projects with a combination of grants and loans from the Clean Water Fund. Under current law, starting in FY 07, eligible projects can receive only loans, and not grants. The bill repeals this provision, allowing regional authorities to continue to receive

project grants.

Finally, it extends the length of time in which a special services district must repay its debt obligations from one to seven years after it incurs them.

*House Amendment "A" (1) authorizes the allocation of \$1 million from the Clean Water Fund, adds a fourth municipality, and makes several other changes to the pilot program; (2) adds the conveyance tax provision; (3) repeals the sunset on Clean Water Fund grants to regional water pollution control authorities; and (4) makes other changes.

EFFECTIVE DATE: Upon passage, except that a reporting requirement for municipalities in the pilot program and the special services district provision take effect September 1, 2007, and the conveyance tax provision takes effect July 1, 2007.

MUNICIPAL STORMWATER AUTHORITY PILOT PROGRAM

Eligibility Criteria

The bill establishes population criteria that four priority municipalities must meet, and allows other, non-priority municipalities to apply if a priority town chooses not to participate.

Priority Municipalities. To qualify as a priority municipality, a town must border Long Island Sound and have a population, according to the most recent Register and Manual, of between (1) 18,000 to 18,500, (2) 26,000 to 26,500, (3) 84,000 to 84,500, or (4) 125,000 to 125,500. Municipalities meeting these criteria that wish to participate must apply, on forms the commissioner prescribes, by September 15, 2007. According to the 2006 Register and Manual, four municipalities meet the bill's geographic and demographic criteria: Stonington, New London, Norwalk, and New Haven. A municipality that fails to submit a timely application waives its right to apply for a grant. If the commissioner rejects an application she deems incomplete, the applicant has 15 days to correct any defects. If the commissioner is not

satisfied with the town's application, she must consider the town as a non-priority applicant.

Non-priority Municipalities. If one or more priority towns waives its right to apply, any town may apply that is complying with permit requirements for stormwater discharge from, or associated with, a separate storm sewer system it owns or operates. Under the bill, a separate storm sewer system includes roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that discharge into state waters.

The commissioner must review timely applications from non-priority towns in the order she receives them. In choosing a non-priority town to participate, she must consider (1) its proximity to Long Island Sound or other major river or water body and (2) whether its inclusion will result in a diverse representation of urban and suburban areas.

Each town chosen to participate in the pilot program must submit a stormwater management program for the commissioner's approval. The program must include an estimate of the operational and capital expenses and income required to implement the plan over five years, and other elements the commissioner prescribes.

Grants

The commissioner may authorize up to \$1 million in grants for the pilot program from any Clean Water Fund account, to the extent funds are available (see BACKGROUND). Towns may use the grants to reimburse up to 80% of the planning, engineering, and legal costs associated with creation of a stormwater authority and development of a stormwater program. But the grants cannot be used to reimburse towns for costs associated with their program applications. The commissioner can use money from the fund to pay reasonable administrative costs.

Stormwater Authorities

The bill allows the legislative body of a municipality participating in the pilot program to adopt an ordinance designating an existing board or commission as the stormwater authority, or to create a new authority. If a town creates a new authority, it must, by ordinance, decide:

1. the number of members;
2. their compensation, if any;
3. whether they are elected or appointed;
4. if appointed, the method of their appointment;
5. the method of removal; and
6. their terms of office. No more than half the members' terms may expire in any one year.

Stormwater Management Program

The authority must develop a stormwater management program, including (1) construction and post-construction site stormwater runoff control, including control detention and prevention of stormwater runoff from development sites or (2) control and abatement of pollution from existing land uses, and the detection and elimination of connections to the stormwater system that threaten the public health, welfare, or the environment. It must also (1) provide public education and outreach relating to stormwater management activities and establish procedures for public participation; (2) administer the program; (3) set boundaries for the stormwater authority district; and (4) recommend to the town's legislative body a levy on taxable real property in the stormwater district to permit the authority to plan, lay out, acquire, construct, reconstruct, repair, maintain, supervise, and manage stormwater control systems.

Assessment of Fees

The authority may levy fees on property owners to achieve its

purposes. In setting fees, the authority may consider (1) the amount of impervious surfaces generating stormwater runoff, (2) land use types that result in higher concentrations of stormwater pollution, and (3) the property's grand list valuation. The authority may reduce or defer such fees for land classified as, or consisting of farm, forest, or open space. This apparently refers to land classified as "490" land for property tax purposes, as well as land not so classified.

Reporting Requirements

By February 11, 2008, municipalities taking part in the pilot program must submit a joint report to the Environment Committee on the program's status. The report must include:

1. recommendations on whether additional legislation is needed to grant authorities the power to issue bonds, notes, or other evidences of debt, apparently for each district;
2. a map showing the district's boundaries;
3. information on the purpose and amount of any assessment recommended to fund the authority; and
4. any other information the commissioner requests under her grant agreements with the participating towns.

BACKGROUND

Clean Water Fund

The Clean Water Fund provides financial assistance to municipalities for planning, designing, and constructing wastewater collection and treatment projects. The fund includes a water pollution control federal revolving loan account, water pollution control state account, a Long Island Sound clean-up account, a drinking water federal revolving loan account, a drinking water state account, and a river restoration account (CGS § 22a-477).

Regional Water Pollution Control Authorities

Two or more municipalities may form a regional water pollution

control authority to exercise the same powers and achieve the same purposes as a municipal water pollution control authority. Regional water pollution control authorities receive various combinations of grants and loans from the fund for eligible projects, depending on the type of project. For example, initial projects receive a grant for 25% of the cost of the project and a loan for the remaining costs. But regional authorities with a combined sewer project receive a grant of 55% of its cost (CGS § 22a-517).

490 Program Classification And Penalty

By law, farm, open space, and forest land is assessed at its current use value for property tax purposes. Under current law, the classification terminates when (1) the land's use is changed to something other than was described in the owner's application or (2) the land is sold or transferred. Under the 490 program, property is subject to a conveyance tax on its fair market value if it is sold or its use is changed within 10 years of the classification. The tax rate starts at 10% of the total sales price if it is sold within one year of classification and declines by 1% annually if it sold within 10 years (CGS §§ 12-107a, 12-504a, and 12-504e).

Special Services Districts

Any municipality may establish, by ordinance, a district to preserve, enhance, protect, and develop the town's economic health in order to promote the economic and general welfare of its citizens and property owners (CGS § 7-339m et seq.). Although the statutes suggest that municipal officials start the formation process, the initiative usually comes from property owners who desire extra public services and are willing to pay for them through extra property taxes. Property owners elect a board of commissioners who set the budget and calculate the mill rate.

Legislative History

On April 17, the House referred the bill (File 422) to the Planning and Development Committee, which reported the substitute:

1. creating the pilot program,
2. limiting creation of stormwater authorities only to towns in the pilot program,
3. changing the way an authority can impose assessments,
4. eliminating a provision specifically allowing joint stormwater projects, and
5. extending the time special service districts have to repay debt obligations from one to seven years.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 26 Nay 5 (03/21/2007)

Planning and Development Committee

Joint Favorable Substitute

Yea 12 Nay 4 (04/20/2007)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 45 Nay 3 (05/15/2007)